IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.234 of 1998

Decided on: April 19, 2007

Nirmala Devi **…..Appellant.**

VERSUS

State of H.P. & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Ramakant Sharma, Advocate.**

For the Respondents: **Mr.Vijay Thakur, Deputy Advocate General.**

***Kuldip Singh, Judge* (Oral)**

This appeal has been filed against the award dated 15th September, 1997 passed by learned District Judge, Shimla in L.Ref. No.30-S/4 of 1996 holding that the assessment of the market value done by the Land Acquisition Collector is correct and there is no scope for enhancement of compensation.

2. Brief facts of the case are that land measuring 2 Bighas 2 Biswas comprised in Khasra Nos.619 and 629/1 situate in village Jubbar-Hatti was acquired by State of Himachal Pradesh for construction of Air Port through notification dated 4th June, 1990 issued under Section 4 of the Land Acquisition Act (for short 'the Act'). Thereafter, declarations under Sections 6 and 7 of the Act

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

were issued and proceedings were taken for assessment of the market value and the compensation. The Land Acquisition Collector assessed the compensation at Rs.3,97,280/- inclusive of compulsory acquisition charges and additional payments at the rate of 12% per annum under Section 23(1-A) of the Act and paid the aforesaid amount of money to the appellant.

3. According to the appellant, the compensation assessed by the Land Acquisition Collector was inadequate. She alleged that Land Acquisition Collector has assessed the market value of the land at the rate of Rs.24,000/- per bigha whereas market value is not less than Rs.5 lacs per bigha. She has also alleged that compensation assessed for the timber trees on the acquired land was inadequate. The Land Acquisition Collector in his reply denied that the compensation assessed and paid by him was inadequate. He alleged that the market value was assessed correctly on the basis of material on record. The issues were framed on 19th March, 1997 and ultimately the learned District Judge has held that the Land Acquisition Collector has correctly assessed the market value and there is no scope for enhancement of compensation and accordingly dismissed the reference petition vide impugned award.

4. I have heard the learned counsel for the parties and have also gone through the record.

5. After framing the issues on 19th March, 1997 the case was fixed on 6th May, 1997. It appears new Presiding Officer of the

Court did not join by 6th May, 1997, therefore, the office fixed the date in the case on 17th May, 1997 on which date the case was fixed for 14th July, 1997 for evidence of the appellant. On 14th July, 1997 evidence of the appellant was not present and last opportunity was given to the appellant to produce entire evidence on self responsibility on 10th September, 1997. On 10th September, 1997, none appeared for the appellant nor any witness was present on behalf of the appellant. The learned District Judge on 10th September, 1997 closed the evidence of the appellant by the order of the Court and fixed the case on 15th September, 1997 for orders. On 15th September, 1997 again none was present on behalf of the appellant and the learned District Judge passed the impugned award.

6. The learned counsel for the appellant has submitted that the appellant had engaged a counsel for pursuing her reference petition. She did not receive any communication from her counsel. She came to know about the dismissal of reference petition only on 18th May, 1998 when her attorney contacted the counsel in his office. Appellant did not take steps for production of the evidence in the Court below as she was not aware of the orders passed by the learned District Judge fixing the date for her evidence. It has been submitted that valuable rights of the appellant are involved in the land which has been acquired and she has not been paid just compensation. The appellant was not negligent in pursuing her

case. The learned counsel for the appellant has prayed one opportunity for producing the evidence.

7. The learned Deputy Advocate General supported the impugned award. He has contended that repeated opportunities were given to the appellant for producing her evidence but she did not produce any evidence and, therefore, learned District Judge has rightly dismissed the reference petition.

8. The case in the trial Court was fixed on 17th May, 1997 and 14th July, 1997 for evidence of the appellant. The case was also fixed on 10th September, 1997 for the evidence of the appellant on which date none appeared on behalf of the appellant in the Court below and the evidence of the appellant was closed. In my view, the explanation given by the appellant for not producing the evidence is possible and reasonable. The appellant has filed the reference petition and her valuable rights were involved in the case. In these circumstances, it cannot be said that she intentionally did not appear and produce the evidence in the Court below. In the interest of justice, no prejudice will be caused to the State if one opportunity is given to the appellant to produce her entire evidence and reference petition is decided on merits. Accordingly, the impugned award is set aside and the case is remanded to learned District Judge, Shimla subject to costs of Rs.1000/- to be paid by appellant / petitioner. The learned District Judge shall give only one opportunity to the appellant / petitioner to produce her entire evidence for which she can take the assistance of the Court and

thereafter the learned District Judge shall proceed and decide the reference petition in accordance with law.

9. The parties through their counsel are directed to appear before the learned District Judge, Shimla on ***21st May, 2007*** on which date the learned District Judge shall fix the case for the evidence of the appellant / petitioner.

April 19, 2007 *(soni)*

(Kuldip Singh)
Judge.